

U.S. Patent Application Serial No. **09/743,531**
Response dated March 15, 2004
Reply to OA of **November 13, 2003**

REMARKS

Claims 1 to 9 are in the application wherein claims 6 and 7 have been withdrawn from consideration by the Examiner as being for a non-elected invention and the remaining claims are finally rejected over the patent to Fontein, et al., with claims 1, 2, 8 and 9 being rejected under 35 U.S.C. §102(b) as being anticipated by Fontein, et al. and claims 3 to 5, 8 and 9 being rejected under 35 U.S.C. 103(a) as unpatentable over this patent.

The Examiner in respectfully requested to reconsider first, the propriety of the issuance of a final rejection on the claims in this application and secondly, the rejections of the claims in the application on the basis of suggestions and teachings contained in the patent to Fontein, et al.

As to the propriety of the final rejection, the Examiner is directed to the requirement for issuance of a final rejection in a first Office Action stated in §706.07(b) M.P.E.P. to be as follows:

--The claims of a new application may be finally rejected in the first Office Action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application and (2) would have been properly finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application.--

This provision clearly requires that, for a final rejection of claims in a first Office Action to stand, the application must be a continuing application, and all of the claims of the new application must be drawn to the same invention claimed in the earlier application. That the inventions defined by the claims of the instant continuing patent application are different from the inventions of the claims

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finally rejected in the parent application is obvious from the fact that, in the RCE application as filed, claims 1 and 5 have been cancelled; claims 2 to 4, 8 and 9 have been made to contain significant amendments, and new claim 10 has been added. Specifically, in order to address the basis for rejection of the claims stated in the previous final rejection, the claims in the RCE, as filed, particularly require that the swirling gas stream V, which is generated in the container main unit, be "directly impinged upon" by the swirling pressurized liquid that is introduced through the liquid inlet. This is as contrasted with the corresponding claims given in the previous application where the swirling gas was simply "exposed to contact with swirling pressurized liquid."

Therefore, since the scope of the respective sets of claims is significantly different from one other in accordance with the concept of "claim differentiation" as enunciated, for example, in Thomas and Betts Corp. v. Winchester Electronics Division of Litton Systems, 220 USPQ 1 (Fed.Cir. 1983) the claims in the current RCE are directed to different inventions from those in the prior application.

Thus, it is submitted that the finality of the rejection given in the outstanding Office Action is premature and not in accordance with the provisions of §706.07 (b) M.P.E.P. Such finality should therefore be withdrawn as being premature (see §§ 706.07 (c) and (d) M.P.E.P.).

The Examiner is further respectfully requested to reconsider the rejections of the claims in the RCE application, particularly as now amended wherein, by expressly stating that the swirling gas admitted to the container main unit is "directly impinged upon" by the swirling pressurized liquid introduced through the liquid inlet, the claims of the application clearly distinguish over the

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teachings of Fontein, et al. because the reference certainly contains no showing of pressurized liquid impinging directly upon the swirling gas stream.

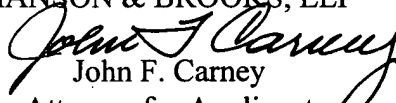
In view of the above, Application respectfully requests that the Examen enter this Amendment in the case and pass the application to issue. In the event the Examiner is constrained to retain the rejection of claims in the application, it is requested that the Examiner nonetheless enter the amendments to claims 2 to 4, 8 and 9 and add new claim 10 herein in order to place the application in better condition for appeal.

On the other hand, however, if the Examiner finds that minor revision is still required to render the claims in the application satisfactory, it is requested that he call the Applicant's attorney at the telephone number indicated below in order to expedite the changes required to place the application in condition for allowance.

In the event that this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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